IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4255 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE GOVT. OF GUJARAT

Versus

B.R. VAIDHYA

Appearance:

1. Special Civil Application No. 4255 of 2002

MR NAGESH SOOD, AGP, for the petitioner

MR VN BHAGODIA for the Respondent

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/12/2003

ORAL JUDGEMENT

The State Government has filed this Special Civil Application under Article 226 of the Constitution of

India challenging the order passed by the Gujarat Civil Services Tribunal in Appeal No.63/99/2780. The respondent herein was serving in the Forest Department as Range Forest Officer. In connection with release of one truck, which was alleged to have been involved in a forest offence, a departmental inquiry was initiated against the respondent. The inquiry officer came to the conclusion that the charges levelled against the respondent were not proved. However, the disciplinary authority did not agree with the said finding of the inquiry officer and he came to the conclusion that the charges levelled against the respondent were proved. Ultimately, the order of removal came to be passed. The respondent here thereafter preferred an appeal before the Gujarat Civil Services Tribunal, as referred to above.

2 After considering the evidence on record, the Tribunal came to the conclusion that the respondent has not committed any misconduct and the charges levelled against him cannot be said to have been proved. The Tribunal accordingly allowed the appeal of the respondent herein and set aside the order passed by the disciplinary authority. It is the said order of the Tribunal which is impugned in this petition at the instance of the State Government.

3 During the course of the hearing, the learned counsel for the respondent pointed out to this Court that at the time when the removal order was passed, the respondent had put in more than 36 years of service. It was also argued that the inquiry officer as well as the Tribunal both reached the conclusion that the respondent had not committed any misconduct. It was suggested that in the facts and circumstances of the case, the Department may be asked to consider the proposal of substituting the order of penalty by any other suitable punishment. The said suggestion was put to AGP Mr Nagesh Sood who has taken time to put the same to the Department.

4 Today, Mr Sood, learned AGP, has stated that the Department has agreed to substitute the penalty, by imposing the penalty of compulsory retirement from the date of the aforesaid order of removal. Mr Sood has placed on record a copy of the order dated 22.12.2003, passed by the Deputy Secretary, Forest Department, which is addressed to the Principal Conservator of Forests, Gandhinagar, in which the Deputy Secretary has stated that the Department has agreed to substitute the said penalty. Considering the aforesaid aspect of the matter and when the petitioner has agreed to substitute the

penalty from removal to compulsory retirement, this petition is partly allowed. The order of the Tribunal, which is impugned in this petition, is quashed and set aside. The order of the disciplinary authority is also set aside insofar as it imposes penalty of removal. Instead, the order of penalty is substituted by the order of compulsory retirement. The effect of the order is that the respondent shall stand compulsorily retired from service with effect from 28th January, 1999. In short, the order of penalty is substituted by compulsory retirement. The order in question will be effective from the date on which the earlier order of removal was passed. By virtue of this order if the respondent is entitled to any retiral dues as per Rules, whatever such dues which are payable by virtue of the substitution of the penalty order, shall be paid to the respondent latest by 15th February, 2004. The Government is directed to expedite payment of such retiral dues to the respondent so that the question of payment of interest does not arise. The learned advocate Mr V.N. Bhagodia, who is appearing for the respondent, states that the respondent shall withdraw all the complaints filed by him against the officers of the Department. He further states that the complaints are in the nature of private complaints and some of the complaints were already withdrawn. Mr Bhagodia, on taking oral instructions from his client, who is present in the Court, states that the respondent shall withdraw all the complaints.

In view of what is stated hereinabove, the petition is partly allowed. Rule is partly made absolute with no order as to costs.

(P.B. Majmudar, J.)

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